

Module 15



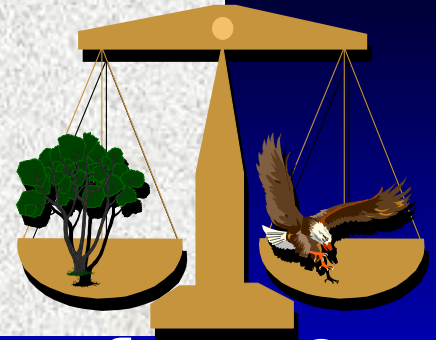
Environmental Considerations

**Civil Works Orientation Course
- FY 11**

OBJECTIVES:

- ▮ Overview of National environmental statutes and applicable Executive Orders that apply to Civil Works projects.
- ▮ Environmental requirements during the Civil Works project delivery process:
 - Reconnaissance Phase
 - Feasibility Phase
 - PED
 - Construction
 - Operation & Maintenance





- **National Environmental Policy Act of 1969**
- **Fish and Wildlife Coordination Act of 1958**
- **Endangered Species Act of 1973**
- **Clean Water Act of 1977**
- **National Historic Preservation Act of 1966 (as amended)**
- **Clean Air Acts of 1963 & 1970**
- **Coastal Zone Management Act of 1972**

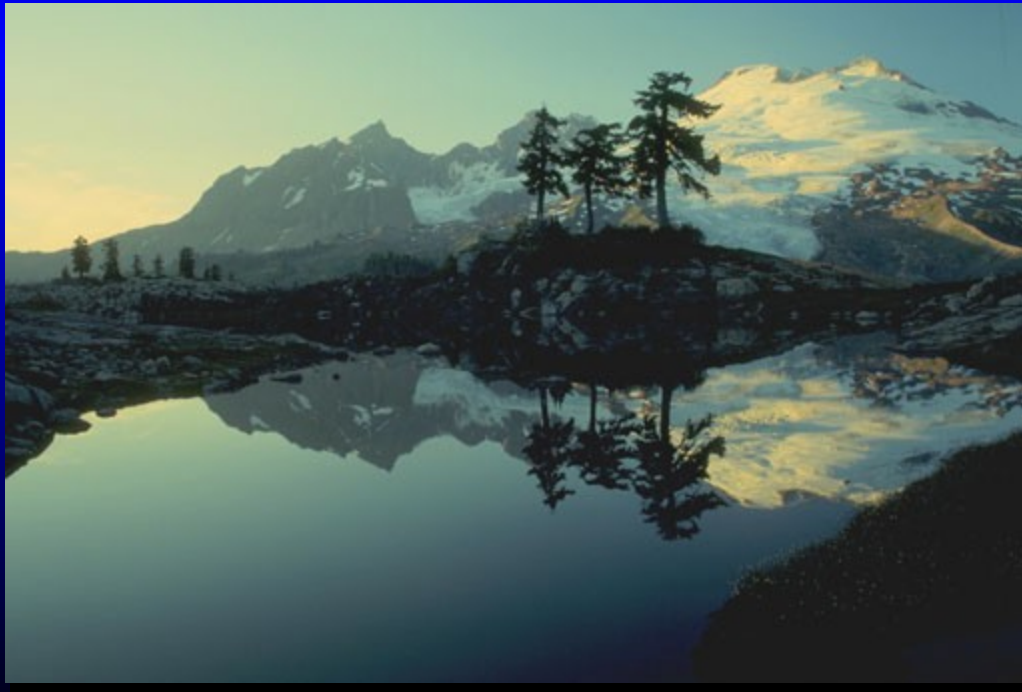


Others:

- **Marine Protection, Research, and Sanctuary Act**
- **Executive Order 11990 - Protection of Wetlands - 1977**
- **Executive Order 12898 - Environmental Justice - 1994**
- **Executive Order 13186 - Migratory Waterfowl 2001**
- **AND over a hundred others!! (You are never out of the woods!)**

National Environmental Policy Act - 1969

Effective 1 January 1970



NEPA: Legal Requirements

- Identification of significant environmental resources likely to be affected.
- Assessment of impacts
- Full disclosure of likely impacts
- Consideration of full range of alternatives, which must include No Action (future project condition) w/o

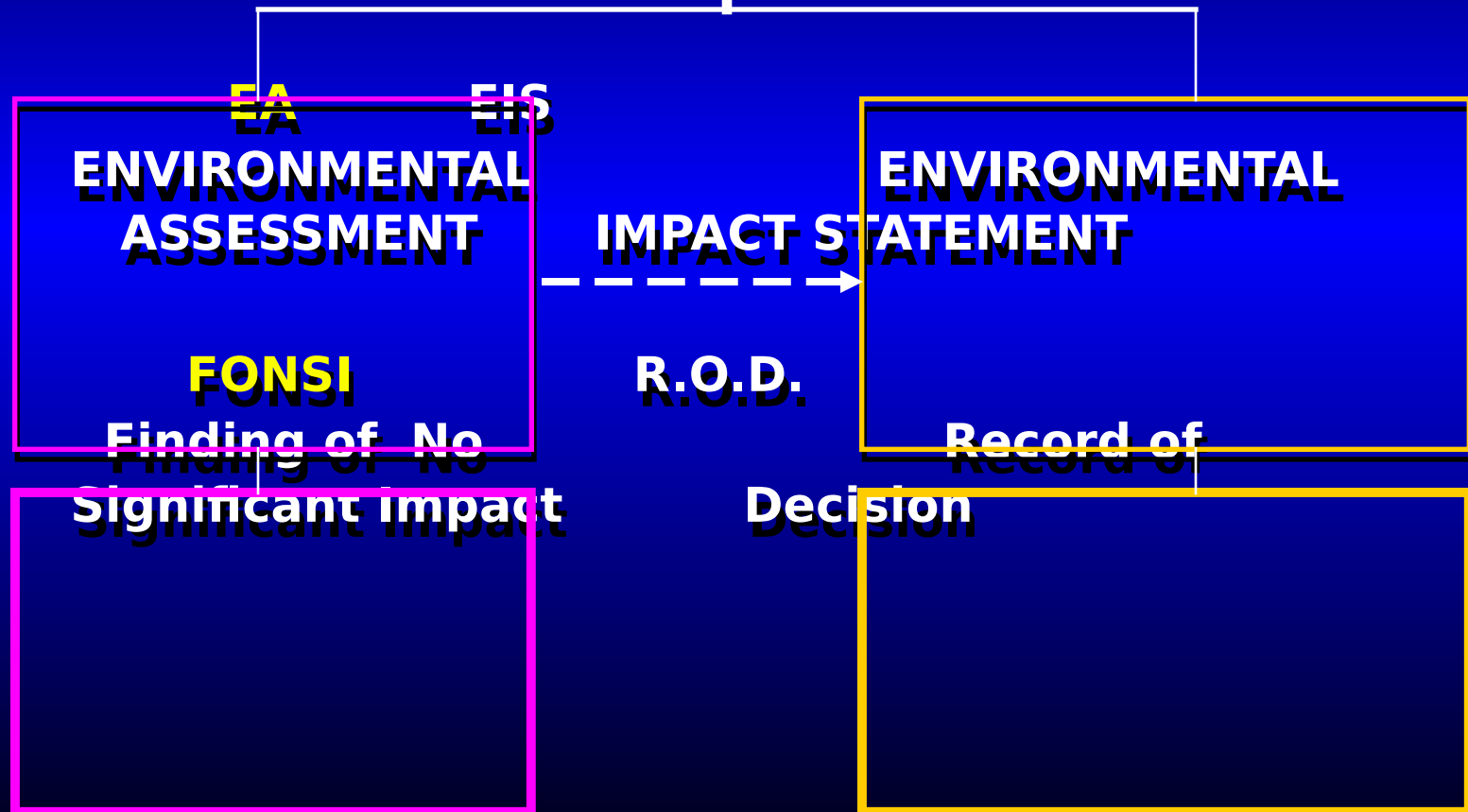


NEPA: More Legal Requirements

- Consideration of mitigation measures to avoid, minimize, replace or compensate for adverse impacts
- 40 CFR 1500 - 1508 CEQ implementing regulations for NEPA.
- ER 200-2-2 is the Civil Works implementation guidance; additional guidance for Regulatory program at 33CFR Part 325, Appendix B



NEPA PROCESS



Environmental Assessment (EA)

- ▮ Completed during the Feasibility Study !
- ▮ **EA must provide the following:**
 - ▮ Discussion of need for proposed project
 - ▮ Description of environmental impacts
 - ▮ Determination of impact significance
 - ▮ Agency coordination listing
- ▮ **Results in a FONSI (Finding of No Significant Impact signed by the District Commander) *or* an EIS**

Note: Recommended length should be no more than 15 pages.

Environmental Impact Statement (EIS)

- ❑ EIS prepared when the proposed action is expected to have **SIGNIFICANT** effect on the quality of human environment
- ❑ EIS completed during feasibility, environmental impacts addressed as an integral part of plan formulation and alternative evaluation.
- ❑ Required format, mandatory public meetings (including public scoping meeting), required

Environmental Impact Statement (EIS)

- ❑ EIS requires publication of Notice of Intent (NOI) in the Federal Register
- ❑ EIS requires preparation of a Record of Decision (ROD) signed by ASA(CW) or DCW
- ❑ Corps environmental documents (EA/EIS) are not decision documents, but serve as supporting documentation for decision documents like feasibility reports

Environmental Impact Statement (EIS)

- ▮ **EIS content includes:**
- ▮ **Statement of purpose/need for project**
- ▮ **Description of proposed action and alternatives considered**
 - ▮ “no action” alternative
 - ▮ “all reasonable alternatives”
- ▮ **Description of affected environment**
- ▮ **Comparison of environmental consequences and effects**
- ▮ **Description of mitigation**
- ▮ **Identifies “preferred alternative”**
- ▮ **Final EIS includes and addresses all comments received during review of DEIS**

Fish & Wildlife Coordination Act - 1958:

- Requires coordination during **ALL** phases of project delivery with the USFWS, NMFS, and the State fish and wildlife agency.
- Requires coordination for the purpose of determining the significance and to propose



Fish & Wildlife Coordination Act - 1958:

- Requires documentation of full consideration of views and recommendations.
- Ensures that fish and wildlife resources are given equal consideration other project purposes.
- Corps/USFWS transfer funding agreement to fund USFWS involvement during



Fish & Wildlife Coordination Act - 1958:

- Document how you address fish and wildlife resources consideration during the study.
- Final Fish and Wildlife Coordination Act Report should be received by Corps prior to signing of final NEPA decision document.



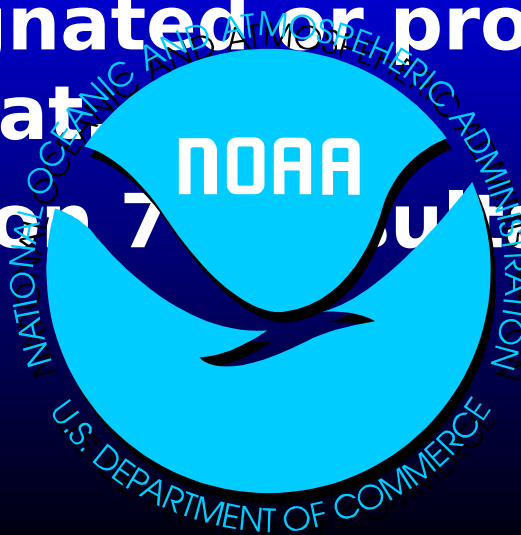
Evaluate the recommendations of the USFWS/NMFS, and state(s) in the report.



ibility report should explain how recommendations were considered

Endangered Species Act - 1973:

- Requires separate coordination from Fish and Wildlife Coordination Act.
- Protects Federally listed or proposed species and their designated or proposed critical habitat.
- Section 7 Consultation



Endangered Species Act:

(cont.'d)

▮ Formal Section 7 Consultation Process:

- ▮ Request list of species and habitats
- ▮ Corps Biological Assessment identifies any listed species or habitats that may be impacted by action (180 days)
- ▮ USFWS and/or NMFS issues Biological Opinion with conservation recommendations, reasonable & prudent measures, or jeopardy opinion (90 to 135 days)



Clean Water Act

- ▮ **Section 404 - Established permit program for discharge of dredged or fill material into the waters of the United States.**
- ▮ **Section 404(b)(1) Guidelines - Stresses avoidance and minimization of discharges into waters of the U.S.**
- ▮ **Section 404(r) - Congressionally granted exemption from Section 401 requirement prior to project authorization.**
- ▮ **Section 401 - State water quality**

Clean Water Act (cont.'d)

"Waters of the United States"

= waters that are, were, or might be used for interstate or foreign commerce; waters subject to ebb and flow of tide; interstate waters; wetlands; all other water whose use, degradation, or destruction affect interstate or foreign commerce.

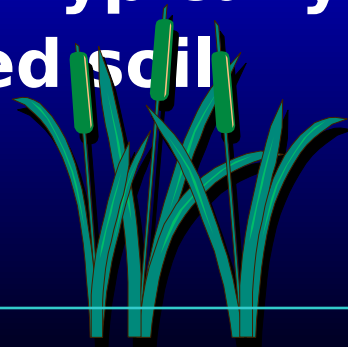


Clean Water Act (cont.'d)

"Wetlands"

= those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adopted for life in saturated soil conditions

(33 CFR part 328.3(b))



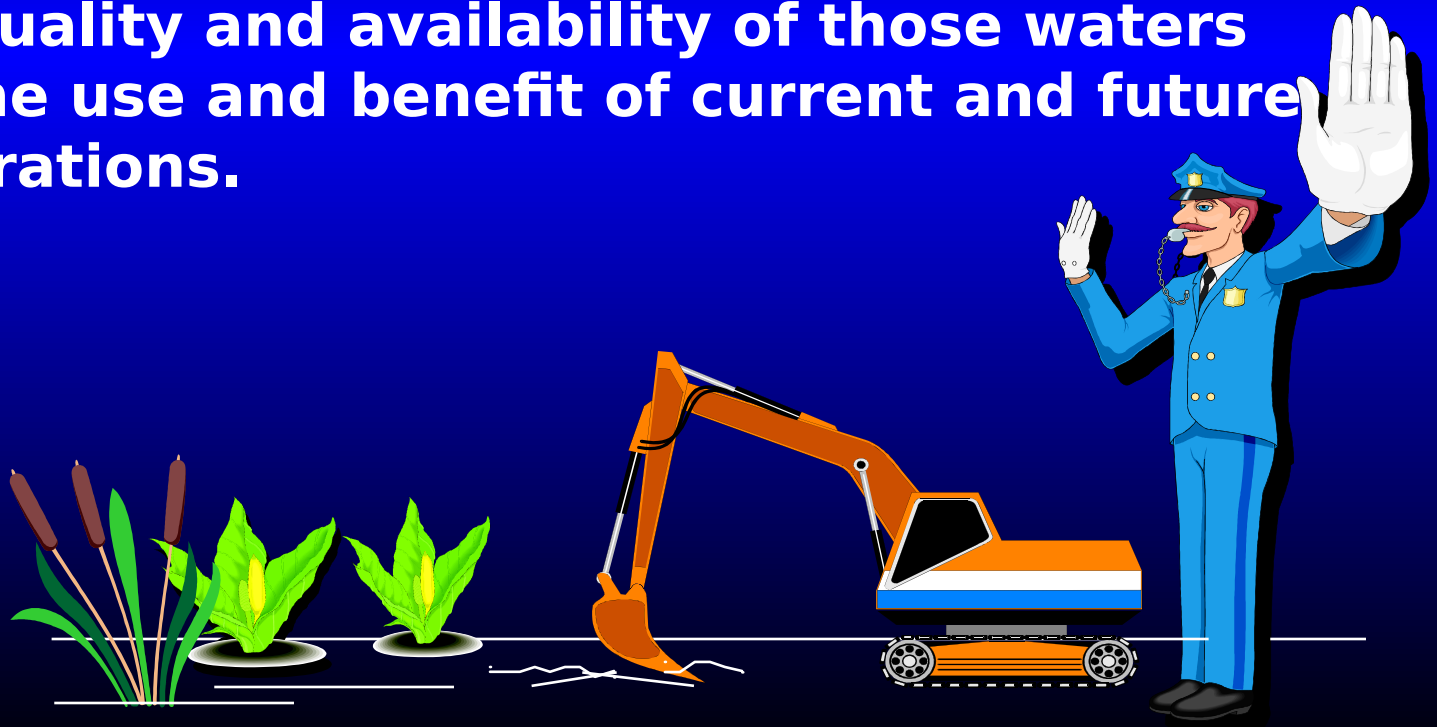
Corps Regulatory Program:

A brief discussion
about the regulatory
program



REGULATORY PROGRAM

The program purpose is to regulate certain activities in the jurisdictional “waters of the United States and wetlands” to protect the quality and availability of those waters for the use and benefit of current and future generations.



REGULATORY PROGRAM

Authorities:

**Section 10 of the Rivers and Harbors Act
of 1899**

**Section 107 of the Marine Protection,
Research and Sanctuaries Act of 1972**

**Section 404 of the Water Pollution Control
Act of 1972 as amended (Clean Water Act)**



PERMIT TYPES

▮ Individual Permits

- ▮ Individual or business submits an application that describes their proposed action and expected effects
- ▮ Corps issues a public notice for comment
- ▮ Applicant coordinates with resource agencies
- ▮ Corps makes a public interest determination on issuance of permit

▮ General Permits (Nationwide & Regional)

- ▮ Cover specific categories of actions
- ▮ Instituted to reduce paperwork and delay in processing permit requests
- ▮ Programmatic NEPA documentation

REGULATORY PROGRAM

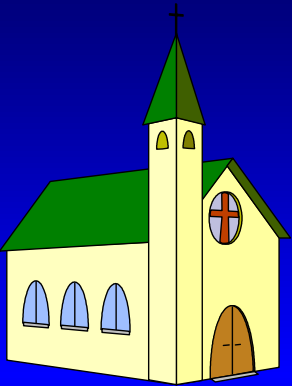
During the project delivery process it is important that the team coordinate with the regulatory office in order to avoid conflicts

During the planning phase the regulatory office can be a valuable team member

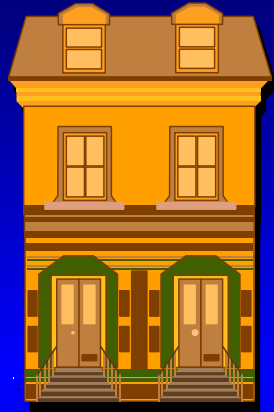
The Corps does not issue “itself” a permit, however we perform the same analysis



National Historic Preservation Act



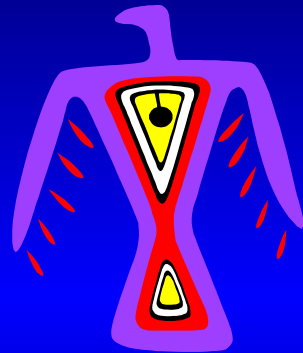
- Established National Register of Historic Places and National Historic Landmarks.
- Identifies Federal responsibilities with regard to historic preservation - cultural & archaeological
- Established Advisory Council on Historic Preservation
- State Historic Preservation Office (SHPO) and Federally recognized tribes must be consulted



Section 106 establishes the

Native American Graves Protection and Repatriation Act (NAGPRA) of 1990

- ▮ **Applies to all Federal agencies and museums that receive Federal funds.**
- ▮ **Covers the treatment and disposition of Native American human remains, funerary objects, objects of cultural patrimony, and sacred objects prior and subsequent to the laws enactment.**
- ▮ **Requires coordination with the appropriate Native American tribes**
- ▮ **St. Louis District currently coordinating national NAGPRA compliance effort for the Corps.**



Clean Air Act



- ▮ **Purpose:** Ensure that any Federal activity which may result in the discharge of air pollutants shall comply with Federal, state, interstate, and local air quality control plans
- ▮ **Compliance:** Requires coordination with appropriate local air quality control authority, and permits as needed.

Coastal Zone Management Act



- ▮ **Purpose:** Ensure that any Federal activity within a state's coastal zone is consistent to the maximum extent practicable with the state's CZM plan
- ▮ **Compliance:** Coastal consistency determination prepared by the Corps and submitted to the state for concurrence.

Marine Protection, Research, and Sanctuary Act



- **“Ocean Dumping Act”**
- **EPA**: EPA designates location of ocean disposal sites and prepares required environmental documentation for site designation.
- **Corps**: Regulates the actual disposal of materials at the designated sites under Section



Executive Order 11990 - Protection of Wetlands



- ▮ Provides leadership in minimizing destruction, loss or degradation of wetlands.
- ▮ Requires Federal agencies to undertake or assisting construction located in wetlands unless there is no practical alternative.



Executive Order 12898 - Environmental Justice



- Requires Federal agencies to identify and address disproportionately high and adverse human health and environmental effects of its activities on disadvantaged groups. Should be specifically addressed and documented as part of the public involvement process.



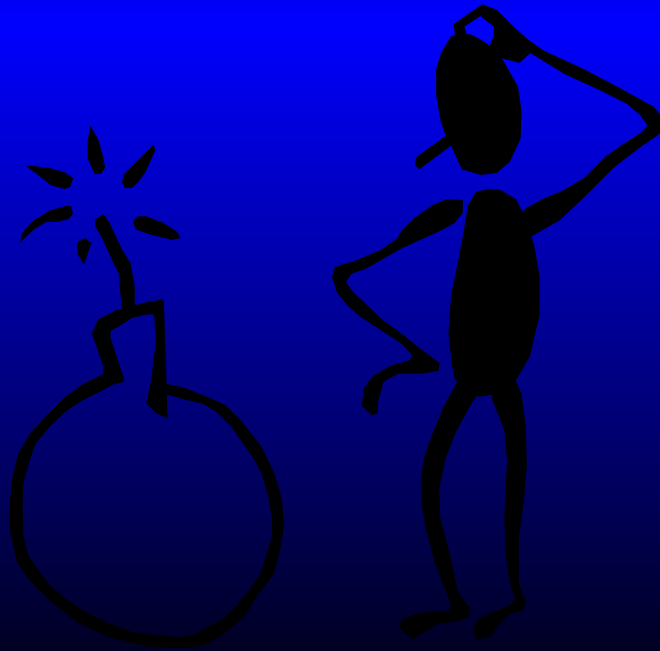
Executive Order 13186 - Migratory Waterfowl



- Requires Federal agencies to develop MOU's with USFWS to promote the conservation of migratory bird populations.
- Formal guidance under development.



Environmental Considerations



USACE Environmental Operating Principles *(condensed version)*

- 1. Strive to achieve Environmental Sustainability.**
- 2. Recognize the interdependence of life and the physical environment.**
- 3. Seek balance and synergy among human development activities and natural systems.**
- 4. Continue to accept corporate responsibility and accountability.**
- 5. Seek ways and means to assess and mitigate cumulative impacts.**
- 6. Build and share an integrated scientific, economic & social knowledge base.**
- 7. Respect the views of individuals and groups interested in Corps activities; listen to them actively and learn from their perspective.**

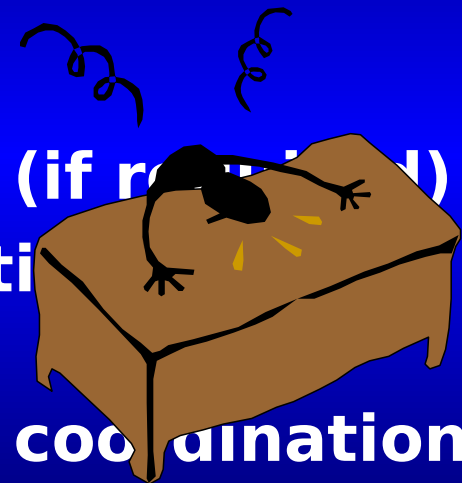
See ER 200-1-5 for implementation policy guidance



- **Quick assessment of potential impacts of the proposed project**
- **Scope of environmental studies to be conducted during feasibility phase.**



- ❑ **Conduct environmental studies & participate in formulation process**
- ❑ **Clean Water Act compliance**
 - ❑ **State water quality certification (if required)**
- ❑ **Initiate Fish and Wildlife Coordination process**
- ❑ **Threatened & endangered species coordination**
 - ❑ **Section 7 Consultation (if required)**
- ❑ **Cultural & Historical resources consultation**
- ❑ **HTRW screenings**
- ❑ **Prepare NEPA documentation (EA-FONSI / EIS-
RDP)**

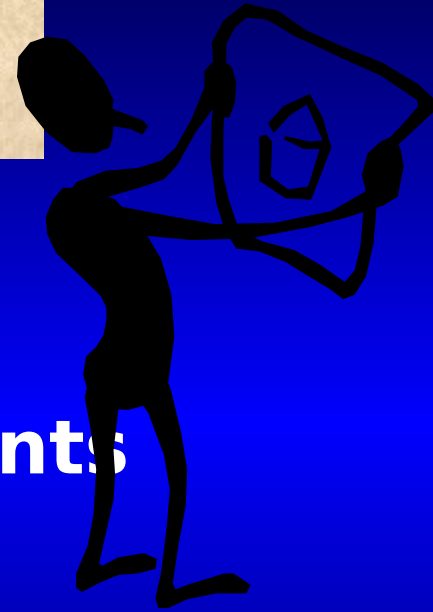


PLANNING IS THE EIS...

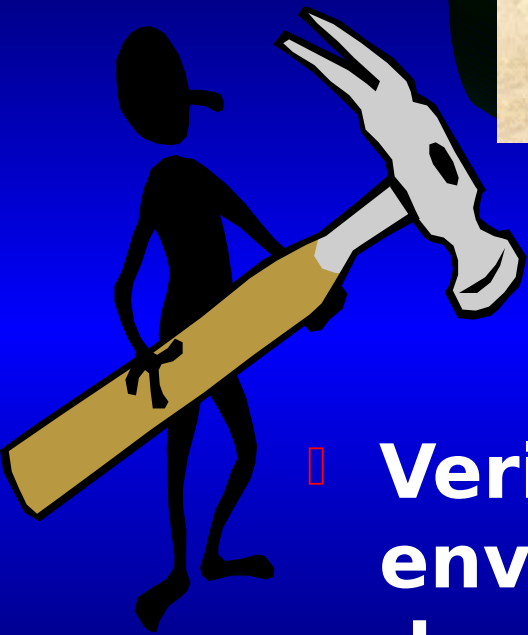
PLANNING PROCESS STEPS	EIS PARAGRAPHS
Problems and Opportunities	Purpose of and Need for Action
Inventory and Forecast	Affected Environment
Formulation	Alternatives Including Proposed Action
Evaluation	Environmental Consequences
Comparison	Alternatives Including Proposed Action
Selection	none

...THE EIS IS PLANNING

EIS PARAGRAPHS	PLANNING PROCESS STEPS
Cover Sheet	None
Summary	None
Table of Contents	None
Purpose of and Need for Action	Problems and Opportunities
Alternatives Including Proposed Action	<ul style="list-style-type: none">• Formulation• Comparison
Affected Environment	Inventory and Forecast
Environmental Consequences	Evaluation
List of Preparers	None
List of Agencies	None
Index	None
Appendices	None



- ▮ **Verification of compliance with environmental commitments made during feasibility phase**
- ▮ **Provide input on project plans and specs.**
- ▮ **Detail how project will be constructed to minimize environmental impacts**
- ▮ **Identify methods of construction**



- ▮ **Verification of compliance with environmental commitments made during feasibility/PED phases**
- ▮ **Site inspections & monitoring**



- ▮ **Verification of compliance with environmental commitments made during feasibility & PED phases**
- ▮ **Site inspections & monitoring**

SUMMARY COMMENTS:

- ▮ **Coordinate EARLY, OFTEN, & CONTINUOUSLY!**
- ▮ **Environmental considerations are an integral part of plan formulation and evaluation process.**
- ▮ **Assess impacts of proposed project**
- ▮ **Meet requirements of all applicable laws (check the Environmental Desk Reference)**
- ▮ **Avoid, minimize, compensate (= mitigate!)**
- ▮ **NEPA Compliance**
 - ▮ **EA/FONSI**
 - ▮ **EIS/ROD**



